



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 7 2008

Mr. Jesse Burchfield

Sacramento, California 95818

RE: MUR 5646

Dear Mr. Burchfield:

On July 30, 2008, the Federal Election Commission accepted the signed conciliation agreement and civil penalty you submitted in settlement of violations of 2 U.S.C. §§ 432(c) and 439a(b)(1), and a knowing and willful violation of 2 U.S.C. § 434(b)(1), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, reading "Dawn M. Odrowski", is written over the typed name.

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

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2. Cohen for New Hampshire ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and was the principal campaign committee for Burton Cohen during the 2004 election cycle.

3. At all relevant times, Jesse Burchfield ("Respondent") was campaign manager and acted as *de facto* treasurer for the Committee.¹

The Law

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") requires a committee treasurer to file with the Commission periodic reports of receipts and disbursements. 2 U.S.C. § 434(a). Each report shall disclose, among other things, the amount of cash on hand at the beginning of a reporting period, total receipts, and for each contribution aggregating in excess of \$200 within an election cycle, the name and address of the contributor and the date and amount of the contribution. See 2 U.S.C. § 434(b)(1), (2), and (3)(A). Each report shall also disclose the total disbursements and the name and address of each person to whom any disbursement aggregating in excess of \$200 in an election cycle is made, together with the date, amount and purpose of the disbursement. See 2 U.S.C. § 434(b)(4), (5), and (6)(A).

5. The Act also requires a committee treasurer to keep an account of the name and address of every person to whom a disbursement is made, together with the date, amount and purpose of the disbursements made by the committee and to keep copies of receipt invoices or cancelled checks for all disbursements that exceed \$200. 2 U.S.C. § 432(c)(5).

6. The Act further prohibits any person from converting contributions or donations to personal use. 2 U.S.C. § 439a(b)(1). See also 2 U.S.C. § 431(11) (defining "person" under

¹ John Buchalski was the Committee's named treasurer in its Statement of Organization but did not perform the duties of treasurer except to sign the first two Committee disclosure reports, and amendments thereto, that Burchfield prepared. Burchfield signed Buchalski's name to subsequent disclosure reports.

the Act to include individuals and committees). Examples of *per se* instances of personal use include using campaign funds for non-campaign related automobile expenses or vacations or other non-campaign related trips. See 2 U.S.C. § 439a(b)(2)(A)-(I). In addition, the Act considers a contribution or donation improperly converted for personal use if “the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective” of the campaign. 2 U.S.C. § 439a(b)(2).

7. The committee treasurer is personally responsible for filing complete and accurate disclosure reports and statements with the Commission. 11 C.F.R. § 104.14(d). Therefore, a treasurer may be held personally liable for violations of the Act under certain circumstances. See *Federal Election Comm’n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985 (D.N.J. 1986); *Federal Election Comm’n v. Gus Savage for Cong. 82 Comm.*, 606 F. Supp. 541, 547 (N.D. Ill. 1985); *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3,5 (Jan. 3, 2005). A person who is not the named treasurer but who acts as *de facto* treasurer by performing the duties of treasurer may also be held personally liable for the accuracy and completeness of disclosure reports.

8. The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); see also *Dramesi for Cong. Comm.*, 640 F. Supp. at 987 (distinguishing between “knowing” and “knowing and willful”). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge” that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990).

The Facts

9. The Candidate hired Jesse Burchfield in 2002 to be the campaign manager for his re-election campaign to the New Hampshire state senate. As state campaign manager, Burchfield performed the compliance functions for the state campaign, including completing disclosure reports. As a result of the Candidate's successful re-election, the Candidate hired Burchfield to work as the campaign manager for the Committee.

10. Although the Committee had a named treasurer, for all intents and purposes, Burchfield performed the duties of the Committee treasurer. Cohen gave Burchfield broad authority to handle the Committee's finances, prepare and file disclosure reports with the Commission, and maintain the Committee's records. Specifically, Burchfield controlled the Committee's checkbook, bank statements and the Committee's bank card with ATM/debit card functions; picked up mail from the Committee's mailbox, which included contribution checks; deposited contributions into the Committee bank account; made disbursements from the Committee's bank account using the Committee's debit card and cash obtained with the ATM card and checks that he prepared for the Candidate's signature; and moved funds between the Committee's two bank accounts. Burchfield was the only person with knowledge of the ATM card personal identification number. He also prepared the Committee's disclosure reports and filed them with the Commission.

11. During the early stages of the Candidate's federal campaign, Burchfield and the Candidate used approximately \$23,860 from the Candidate's state campaign to pay for expenses related to his federal campaign, including the initial consulting fee of the fundraising firm hired for the U.S. Senate campaign, salaries and housing allowances of staffers and the fundraising consultant, speechwriting assistance, phone line deposits, office supplies, postage, and printing

1 costs. The expenditure of these funds was not reported in the Committee's first disclosure report
2 and is impermissible under 2 U.S.C. § 441i(e) and 11 C.F.R. § 110.3(d).

3 12. Burchfield converted approximately \$10,871 of campaign funds to his personal
4 use. First, Burchfield admits to using \$4,871 in Committee funds to pay for his personal
5 expenses through debit card transactions and ATM withdrawals using the Committee's bank
6 card. Burchfield used these campaign funds to pay for such things as personal vacation
7 expenses, including rental cars, during trips to New Orleans and California; a personal website
8 subscription, and pet supplies. Further, out of an additional \$9,500 in debit card transactions and
9 ATM withdrawals identified by the Committee as possible disbursements for personal use,
10 Burchfield has estimated approximately 60% of these disbursements (\$5,700) were for his
11 personal expenses and 40% were to pay for campaign expenses.

12 13. Burchfield deliberately failed to disclose disbursements totaling \$187,720 in
13 the five disclosure reports he filed with the Commission covering the period of January 1, 2003
14 through March 31, 2004, about 41% of the Committee's total disbursements as reported in its
15 final amended reports. Burchfield also misreported \$117,720 in receipts by under-reporting
16 \$6,590 in receipts in the 2003 July Quarterly Report, over-reporting a total of \$26,140 in receipts
17 in the 2003 April Quarterly, October Quarterly, and Year End Reports, and in the last report he
18 filed, the 2004 April Quarterly Report, fabricating or inflating \$49,900 in itemized contributions
19 and failing to itemize 119 contributions totaling \$35,090. The reporting violations totaled
20 \$305,440.

21 14. Burchfield deliberately misreported the Committee's finances primarily to inflate
22 the Committee's cash on hand so Cohen's U.S. Senate campaign appeared more financially
23 viable. He also intentionally failed to report federal campaign expenses paid for with state

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1 campaign funds and the disbursements made to pay for his personal expenses. A relatively small
2 percentage of the Committee's misreporting is attributable to Burchfield's conversion of
3 campaign funds to personal use.

4 15. Burchfield also failed to keep an account of the name, address, date, amount and
5 purpose of all disbursements made by the Committee and failed to keep copies of receipts,
6 invoices or cancelled checks for all disbursements that exceeded \$200. Burchfield has admitted
7 that he lost receipts and kept poor records of disbursements. The lack of recordkeeping is further
8 illustrated by the fact that the Committee's 2004 July Quarterly Report, filed after Burchfield left
9 the campaign, included approximately \$122,000 in disbursements that contained no address or
10 purpose listed, or an inadequate purpose such as "information requested" and "expenses."

11 16. As a result of Burchfield's deliberate failure to accurately report the Committee's
12 finances to the Commission, he pled guilty in the United States District Court, District of New
13 Hampshire on November 14, 2005 to one count of filing false statements with the Commission in
14 violation of 18 U.S.C. § 1001. He was later sentenced to one year of probation and six months
15 of home confinement.

16 V. Violations

17 1. Respondent violated 2 U.S.C. § 432(c) by failing to maintain proper records of
18 disbursements and 2 U.S.C. § 439a(b)(1) by converting campaign funds to personal use.

19 2. Respondent knowingly and willingly violated 2 U.S.C. § 434(b) by filing
20 inaccurate disclosure reports with the Commission.

21 VI. Respondent will take the following actions:

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1 1. Respondent will pay a civil penalty to the Federal Election Commission in the
2 amount of One Thousand Five Hundred Dollars (\$1,500), pursuant to 2 U.S.C. § 437g(a)(5)(B),
3 contemporaneously with his signing of this agreement.

4 2. Respondent will cease and desist from violating the Act.

5 3. Respondent is prohibited from working or volunteering on any federal political
6 committee in any capacity that involves fundraising or handling finances for a period of ten (10)
7 years from the effective date of this agreement. This prohibition encompasses recordkeeping and
8 preparing and/or filing disclosure reports with the Federal Election Commission.

9 VII. Respondent, through the submission of extensive financial documentation to the
10 Commission and additional representations, has indicated that financial hardship prevents him
11 from paying a significant civil penalty to the Commission. The Commission regards these
12 submissions and representations as material representations. Due to the mitigating circumstances
13 presented by Respondent Burchfield's financial condition, his criminal conviction on related
14 charges, and his cooperation with the Commission during the investigation of this matter, the
15 Commission agrees to depart substantially from the civil penalty that the Commission would
16 ordinarily accept for this type of activity. If evidence is uncovered indicating that Respondent's
17 financial condition is not as stated, a civil penalty of Six-Hundred and Sixteen Thousand Dollars
18 (\$616,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

19 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
20 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
21 with this agreement. If the Commission believes that this agreement or any requirement thereof
22 has been violated, it may institute a civil action for relief in the United States District Court for
23 the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.


X. Except as provided in Section VI.1 of this agreement, Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomaseenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

Date

8/5/08

FOR THE RESPONDENT:


Jesse D. Burchfield

Date

4-17-08

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